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January 17, 2003

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW B204
Washington, DC 20554

Re: **Madison River Telephone Company, LLC**
Tariff FCC No. 1, Transmittal No. 9
WC Docket No. 02-371

Dear Ms. Dortch:

On behalf of the United States Telecom Association (USTA), I write to make the Federal Communications Commission (FCC) aware of USTA's support for the Direct Case of Madison River Telephone Company, LLC (Madison River).¹ Madison River maintains the traffic-sensitive interstate access tariff for two of its subsidiaries Gulf Telephone Company (Gulftel) and Gallatin River Communications, LLC (Gallatin River). (Gulftel and Gallatin River are together referred to in these rebuttal comments as "the Madison River companies.") Madison River filed Tariff FCC No. 1, Transmittal No. 9 (Transmittal 9) to become effective October 9, 2002. The FCC suspended Madison River's tariff for five months, pending an investigation to determine whether the provisions proposed in Transmittal 9 are unjust or unreasonable in violation of section 201 of the Communications Act of 1934, as amended.² Transmittal 9 proposes an increase in the traffic-sensitive switched and special access recurring rates in Madison River's interstate access tariff.³ USTA supports the Direct Case because it believes that the measures proposed in Transmittal 9 are reasonable and just and should be implemented to protect Madison River from the risk of uncollectibles. USTA urges the FCC to grant Madison River's request in Transmittal 9.

¹ *In the Matter of Madison River Telephone Company, LLC, Tariff No. 1, Transmittal 9*, WC Docket No. 02-371, Direct Case of Madison River Telephone Company, LLC (Dec. 18, 2002) (Direct Case).

² 47 U.S.C. §201.

³ Transmittal 9 increases the uncollectible portion of the traffic-sensitive test period revenue requirement in its 2002 Annual Access Tariff filing by approximately \$424,000.

USTA believes that Madison River should not be punished for the fact that it could not foresee the extreme downturn in the telecommunications industry. No incumbent local exchange carrier (ILEC) foresaw the financial turmoil that has dramatically changed the telecommunications industry or that more and more telecommunications companies would declare bankruptcy and that uncollectibles would increase exponentially. Like ILECs, the Madison River companies have experienced an unprecedented increase in uncollectibles due to these unforeseen financial difficulties burdening the industry. Although in its opposition to Madison River's direct case, Sprint claims to see no correlation between the unstable telecommunications market and Madison River's increased uncollectibles⁴ and AT&T attempts to argue that Madison River's access business has not become more risky,⁵ statistics belie these statements.⁶ Gallatin River's uncollectibles due to bankruptcies have risen to \$788,602 since January 1, 2000.⁷ Gultel's uncollectibles during the same period have risen to \$593,292.⁸ Since January 2000, Gultel has incurred \$489,514 of unpaid bills from defaulting carriers.⁹ Gallatin River has incurred \$404,712 of unpaid bills from defaulting carriers during the same time.¹⁰ If unable to recover some of these bad debt costs, Madison River will be unable to earn its legally authorized rate of return during the remaining tariff period. Madison River estimates that without additional revenues to compensate for uncollectibles, Gallatin River will earn only 10.11% on its interstate switched access services and 10.49% on its special access services, rather than the 11.25% authorized rate of return, during the remainder of the 2002/2003 tariff period.¹¹ Gultel will earn only 9.06% on its interstate switched access services and 10.75% on its special access services during the same period.¹² The FCC should permit Madison River to rely on estimates of uncollectibles that are based on a changed industry, not the industry as it was when it originally filed its interstate access tariff, so that Madison River can earn its authorized rate of return.

In its opposition to Madison River's Direct Case, AT&T argues that apart from the WorldCom, Inc. (WorldCom) and Global Crossing Ltd. (Global Crossing) bankruptcies, the Madison River companies face only normal market fluctuations and are, therefore, adequately

⁴ *In the Matter of Madison River Telephone Company, Tariff FCC No. 1, Transmittal No. 9*, WC Docket No. 02-371, Sprint Corporation Opposition to Direct Case (Jan. 8, 2003) at 2.

⁵ *In the Matter of Madison River Telephone Company, Tariff FCC No. 1, Transmittal No. 9*, WC Docket No. 02-371, AT&T Corp. Opposition to Direct Case (Jan. 8, 2003) (AT&T Opposition) at 5.

⁶ Furthermore, the FCC agrees that the risk of uncollectibles is rising. In a recent Policy Statement, it stated, "We have little doubt that incumbent LEC uncollectibles generally have increased in the past two years." *In the Matter of Verizon Petition for Emergency Declaratory and Other Relief*, Policy Statement, WC Docket No. 02-202, FCC 02-337, (released Dec. 23, 2002) (FCC Policy Statement) at 9.

⁷ Direct Case at 6.

⁸ *Id.*

⁹ *Id.* at 16.

¹⁰ *Id.*

¹¹ Direct Case at 2.

¹² *Id.*

protected by existing collectibles allowances.¹³ USTA disagrees. USTA believes that the significant increase in uncollectibles is not attributable to normal business fluctuations brought on by the bankruptcy filings of a few large interexchange carriers, but, rather, is symptomatic of the financial difficulties burdening the entire interstate access industry. As Madison River points out, these financial difficulties are the result of long-term trends such as reduction in IXC switched access revenues due to substitution by unlimited night and weekend cellular offerings and email and other Internet services and reduction in IXC per minute rates and profits due to intense competition, among other trends.¹⁴ Industry analysts have noted that the cash drain on telephone companies is greater now than in the past, and any increase in uncollectibles is damaging because of the increased “cash burn” required by capital expenditures (some of which subsidize competitors’ entrance into the local market).¹⁵ These financial difficulties have caused long-term structural change in the market. The FCC has agreed that the bad debt problem ILECs are facing is serious and warrants increased protection against nonpayment.¹⁶ Because Madison River faces an increased risk of default among its customers, USTA supports the increase in the allowance for uncollectibles Madison River proposes in Transmittal 9.

AT&T argues that the Madison River companies and ILECs in general are protected from the risk of nonpayment by existing tariff provisions that allow them to collect security deposits from carriers who have no established credit or who have a history of non-payment.¹⁷ USTA disagrees. Historical payment patterns and company representations have shown not to be reliable indicators of possible default. As the recent rash of bankruptcies shows, bankruptcies and business failures can be unforeseen and sudden. Neither WorldCom nor Global Crossing had a history of late payments with ILECs. Until the last business day before WorldCom declared bankruptcy, company representatives were stating that WorldCom was financially sound and would not file for bankruptcy. Existing tariff provisions allowing Madison River to collect security deposits from access customers who have a proven history of non-payment are no protection when these companies, whose payment history is adequate and therefore does not meet the conditions for requiring deposits, declare bankruptcy or succumb to financial difficulties. In these cases, the Madison River companies incur uncollectibles before tariff provisions would allow protective measures to be taken.¹⁸

Both AT&T and Sprint rely on the FCC Policy Statement to attack the proposed rate increases.¹⁹ According to the FCC Policy Statement, however, Madison River’s tariff must be reviewed on its particulars, as presented in Madison River’s Direct Case. In the FCC Policy

¹³ AT&T Opposition at 6-7.

¹⁴ Direct Case at 8.

¹⁵ See, e.g., Scott Wooley, *Bad Connection*, *Forbes* (Aug. 12, 2002).

¹⁶ FCC Policy Statement at 10.

¹⁷ AT&T Opposition at 13.

¹⁸ Direct Case at 9.

¹⁹ See, e.g., AT&T Opposition at 4.

Statement, the FCC states, "The Wireline Competition Bureau will continue to investigate all of these proposed tariff revisions and resolve issues regarding their reasonableness in those investigations."²⁰ USTA believes that on the basis of the particulars presented in Madison River's Direct Case, the FCC should permit Madison River's tariff to take effect.

USTA urges the FCC to recognize that it would be a serious miscalculation to force healthy companies such as the Madison River companies to suffer financial hardship in an attempt to salvage bankrupt or financially unstable carriers. Those filing in opposition to Transmittal 9 have found fault with the increased allowance for uncollectibles proposed by Madison River because they want the Madison River companies to shoulder the risk of lost payments in financially uncertain times. In order to ensure the continued ability of the Madison River companies to serve their local communities as required by law, USTA asks the FCC to act expeditiously to approve Transmittal 9. Even if the FCC does not approve the specific increases proposed in Transmittal 9, it nonetheless must recognize that the Madison River companies should not be forced to bear the entire risk of future bankruptcies. The Madison River companies, as well as other ILECs, need commercially reasonable means to insulate themselves from heretofore unimagined and unprecedented financial turmoil in the telecommunications industry. These companies must be permitted to take steps to reduce the risk of nonpayment, thereby ensuring their own viability and that of the telecommunications industry in general.

In accordance with FCC Rule 1.1206(b)(1),²¹ I am filing this *Ex Parte* Presentation with the FCC electronically for inclusion in the public record. Please telephone me at (202) 326-7223 with any questions.

Sincerely,



Indra Sehdev Chalk
Corporate Counsel

²⁰ FCC Policy Statement at 4.

²¹ 47 C.F.R. § 1.1206(b)(1).